

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

DAVID RASHEED ALI	§	
v.	§	CIVIL ACTION NO. 9:09cv52
NATHANIEL QUARTERMAN	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
ON PLAINTIFF’S POST-JUDGMENT MOTION FOR INJUNCTIVE RELIEF

The Plaintiff David Ali, proceeding *pro se*, filed this lawsuit concerning the grooming policies of the Texas prison system. The lawsuit has been administratively closed pending the outcome of an identical lawsuit which is proceeding in the Southern District of Texas. Ali has appealed this administrative closing.

After the filing of the appeal, Ali filed a motion for a preliminary injunction, essentially seeking the same relief as was sought in his complaint. The Magistrate Judge to whom the case was referred issued a Report recommending that the request for injunctive relief be denied. Ali has filed a motion for leave to file objections out of time.

In his objections, Ali says that the fact that an essentially identical case is pending in the Southern District “appears to ensure that there is a substantial likelihood” that he will succeed on the merits of his claim. He indicates that similar claims have been accepted in other circuits and re-argues the merits of his claims, saying that growing a beard is a fundamental tenet of his religious faith, that the grooming standards are discriminatory, that beards may be worn consistent with the prison interests in safety and security, a short beard would not facilitate the secreting of contraband, and the granting of the injunction would not disserve the public interest.

As noted above, however, Ali is requesting the same relief in his motion for injunctive relief as he did in his complaint. As a general rule, preliminary injunctions and temporary restraining

orders are designed to preserve the status quo prior to the court's consideration of a case on its merits, and are not intended as a substitute for relief on the merits of the case. *See generally* Federal Savings & Loan Insurance Corp. v. Dixon, 835 F.2d 554, 558 (5th Cir. 1987); Shanks v. City of Dallas, Texas, 752 F.2d 1092, 1096 (5th Cir. 1985). Otherwise, the normal procedures would be short-circuited by the simple vehicle of trying a case by way of a motion for injunctive relief. Ali cannot try his case through the vehicle of a request for injunctive relief.

In addition, Ali's case was on appeal at the time that he sought the injunction. The Fifth Circuit has held that the taking of an appeal divests the district court of jurisdiction except as to those matters in aid of the appellate court's jurisdiction. Willie v. Continental Oil Co., 746 F.2d 1041 (5th Cir. 1984). Ali has made no showing that his request for injunctive relief is a matter in aid of the appellate court's jurisdiction.


The Court has conducted a careful *de novo* review of the pleadings in this cause, the Report of the Magistrate Judge, and the Movant's objections thereto. Upon such review, the Court has concluded that the Movant's objections are without merit. It is accordingly

ORDERED that the Movant's objections are overruled and that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Movant's motion for leave to file out-of-time objections (docket no. 33) is GRANTED. It is further

ORDERED that the Movant's application for a preliminary injunction (docket no. 21) is DENIED.

SIGNED this the **21** day of **October, 2009**.


Thad Heartfield
United States District Judge